

FUGITIVE SLAVE LAWS

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SLAVERY ATTITUDE

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Slavery

Attitudes about Slavery

Fugitive Slave Laws

Excerpts from newspapers and other sources

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CONDITION OF THE SLAVES IN THE SOUTHWEST. The Pittsburg Gazette publishes a letter from our fleet on the Mississippi relating to the condition of the negroes on that river:

CONTINUED ARRIVAL OF FUGITIVES.

Fugitive slaves continue to arrive on the fleet from various points in Mississippi and Louisiana, and are generally put to work on the canal across the peninsula, or employed in some capacity on the various vessels. The negroes could not be returned to their masters, if there were such a disposition on the part of our officers; for their owners in many instances are either in the rebel army or have run away, leaving their sable chattels virtually and effectively free.

SUFFERINGS OF PLANTATION SLAVES.

Many of them declare that they never were so badly treated as they have been during the past twelvemonth. They have been overworked, poorly fed, wretchedly clothed and cruelly beaten, without any other reason than to destroy their refractory spirit, and prevent all possibility of insurrection. The effect of this increased severity has been exactly the contrary of what was desired. Negroes who were content with their condition a year ago have since grown very impatient of bondage, and resolved to run away whenever they could obtain an opportunity.

They have had little else to eat during the present year than corn bread and molasses, (bacon, flour and beef having been extremely scarce on account of the blockade, these articles being purchased usually at the North,) and not unfrequently have they been forced to labor very severely when they have had very little aliment. In consequence of this kind of treatment, many of the slaves have died, and it is said that the mortality among the blacks has never been so great as during the past twelvemonth.

GENERAL WILLIAMS RETURNS SLAVES.

Some days ago a family of negroes arrived at Gen. Williams's headquarters and asked for some employment, as they had been prompted to fly from their home on account of cruel treatment. Soon after a woman, living, she said, in Mississippi, some twenty miles south of Vicksburg, went to the General's tent and claimed the negroes, declaring she was tenderly attached to them, especially to the younger ones, and that they were her only means of support.

So cunning a tale did she tell, so much feeling did she seem to display, that the General believed her, and promptly returned her negroes.

SLAVES MUTILATED BY DOGS.

A day or two after he heard she had whipped the slaves half to death, and had actually tied up two of the youngest, ten and twelve years old, and set upon them several fierce dogs, which had nearly devoured their hands and arms and terribly mutilated their bodies. The General sent some of his soldiers to the widow's plantation, and they confirmed the story, horrible as it is, in nearly all of its shuddering particulars. The General lest no time in depriving her of her chattels, promising to give them employment when the condition of their wounds would enable them to work. This woman has the reputation and position of a lady in the South, and possesses intelligence and manners far above most of the women living in Secession.

THE POLICE AND THE SLAVES.

That we may see exactly how the wind blows the following extracts from an editorial of the *Picayune* of Friday will serve to open the eyes of the Northern people as to how the President's Proclamations are expounded in this latitude:

"THE POLICE REGULATIONS IN REFERENCE TO SLAVES.—The emancipation Proclamation of the President of the United States, after enumerating the States and parts of States to which it does not apply, contains these words: 'And which excepted parts are, for the present, left precisely as if this proclamation were not issued.' Among the 'excepted parts' are thirteen parishes of this State, including New-Orleans. These parishes are Orleans, St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terrebonne, Lafourche, St. Mary and St. Martin.

We desire respectfully to call the attention of the authorities here to the very specific language of the Executive of the United States on this subject, inasmuch as it has a very direct and important bearing upon the interests and peace of our citizens. This

self with rations for a long march,) a person ignorant of the real cause of their going would have thought it some joyous picnic party. The ladies at first prevailed upon Colonel CLARKE—who is a very amiable gentleman and a great lady's man—to land them at Manchac; but on arriving there the scene of desolation, and the inhospitable appearance of the alligators and other fierce inhabitants of the swamps in the neighborhood of the Pass, combined to give such a disagreeable notion of the wild region, which has been described by everything human, that the Colonel's fair cargo was quite well satisfied that Madisonville would be the best point after all, at which to terminate their present journey. Accordingly the boat was turned around, and the party soon arrived at that important commercial city, which is to the *Tchefuncta* what New-Orleans is to the Mississippi, Rome to the Tiber, and London to the Thames. Here the rebel ladies were put ashore, with their baggage and provisions. They found but few people in the town to welcome them. There were no soldiers of the Confederacy in the neighborhood, and although there were signs of the guerrillas having recently been about, they had all shedaddled, on hearing the whistle of the *Brown*. As the steamer backed out from the wharf to return, the ladies gave three hearty cheers for Col. CLARKE, followed by three for their idol, JEFFERSON DAVIS.

The whole of this pleasant affair, however, is dashed by a single sentence from the pen of the Commanding General, for just at the moment we have a National officer who is really popular with the Secesh, out comes the following startling paragraph:

[Extract.]

SPECIAL ORDERS No. 13.—Brig.-Gen. JAMES BOWEN is appointed Provost-Marshal General of the Department of the Gulf, and will relieve Col. JOHN S. CLARKE, Aid-de-Camp in his duties as such.

By command of Maj.-Gen. BANKS.

city and the parishes aforesaid, it will be perceived, remain, in reference to our servile population, *precisely* as if no proclamation of the kind had ever been issued. The said proclamation does not touch our local police regulations in the slightest particular; therefore, in respect to this matter, it leaves them 'precisely' where it found them—in full force. The public now are expecting to see the laws enforced, and were much gratified the other day with the steps taken by Col. FRENCH, the Provost-Marshal, toward this end."

It will be perceived that the *Picayune* confines its remarks to the effect of the Proclamation of the 1st of January last. If the previously passed laws of Congress, and the previously issued proclamations of the President regarding Slavery mean anything, have any vitality, is there a slave left in New-Orleans or anywhere else within our lines? The exceptions made by the President are merely pleasant fictions, or what else you please—a strange and singular oversight—for Mr. LINCOLN certainly does not intend to restore Slavery where it don't exist, and I certainly do not think that the whole country is to be free, except the few blessed spots excepted by the President's Proclamation. But to the arrests—the *Delta* treats the subject in this vein:

EXCITEMENT AMONG THE COLORED POPULATION.—Yesterday was an interesting day to the colored population of the *status* slave. Some two hundred had been arrested the previous night by the police, enforcing the order of Col. FRENCH to take up all who were found in the streets after the 8 o'clock bell should ring, who did not have passes from their owners or agents. As no warning had been given them, the lockups were soon full. Yesterday the owners of a great many called, paid jail fees and took their servants home, while others, on showing that they were freemen, were set at liberty, and the balance were sent to the police jail to await the pleasure of their masters and mistresses. There was some stir and a good deal of talk, and some opened their eyes wider than usual at this singular turn of events.—Jan. 22.

WITHOUT PASSES.—A great many negroes were taken up last night, for being out without passes from their owners. This will be the case for a few nights, until the new order of things becomes generally known, when Sambo will either stay in his quarters, get his pass, or brighten up his wits to evade the vigilance of the police.—Jan. 23.

The *Picayune* treats the matter with less levity, and in a more business way, merely congratulating its readers upon the fact that in a few days the *old police regulations of the city regarding slaves will be in full operation*, and everything will be moving on gloriously. Comment is useless. What are we fighting for?

DEPARTURE OF REGISTERED ENEMIES.

For the first time since the arrival of Gen. BANKS the way has been opened to the secesh to get across the lake into rebeldom, and the way it was done forms the staple of a good deal of gossip. The *Delta* gives the report in full, and as it is such an amusing chapter, Northern readers shall have it. Considering how dull everything is here, generally speaking, I feel a sort of malicious dissatisfaction that I was not on the jolly picnic alluded to. Surely no strawerry party that ever left Catherine-street dock to meander among the green shades of Harlem had such a good time generally. But to the account:

THE TRIP TO MADISONVILLE.—Col. CLARKE, Provost-Marshal General of the Department of the Gulf, has returned from his trip to Madisonville, in the land of Dixie. He left here last Wednesday morning on the steamboat *S. B. Brown*, taking about one hundred and fifty women and children, and something less than a dozen old men, being all of the registered enemies that availed themselves of the privilege to cross the lines and join their friends in that promising land of promise and promises. The trip is represented as having been a very agreeable and pleasant one, being more like a party of pleasure than a party that was bidding farewell to pleasure, and from the great number of haskets of provisions, (each lady having provided her-



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 5. The 1882 edition of Thayer's expanded book featured on the cover, of all things, a football player.

We may never know. In the end, Thayer did not mention any romance in his book. On July 26, 1862, Browning saw President Lincoln at the White House and "read him a portion of the letter." Lincoln asked him to leave the letter with him. Browning did so, and thus the letter now appears in the Abraham Lincoln Papers at the Library of Congress. As far as is known, Lincoln never replied to Thayer's letter. *The Pioneer Boy, and How He Became President* appeared in 1863 and was a great success. Seven thousand copies had been printed by the end of 1863, and eighteen thousand were in print in 1864. An 1865 edition noted that twenty-eight thousand copies had been printed. He expanded the book in 1882 and sold about sixty thousand copies by the end of the century. Though no longer read, Thayer's book was, for a time, the most complete biography of Lincoln, and its rags-to-riches theme was clearly a formula for successful writing in Lincoln's century.

Some New Light on the Matson Slave Case

Of the handful of Abraham Lincoln's legal cases which are widely known, the Matson slave case is by far the most controversial. The anomaly of the Great Emancipator's involvement on the side of a slaveholder in this fugitive slave case has vexed and puzzled historians for decades. Early biographies tended to ignore it altogether. Later, some writers tried to explain it away by suggesting that Lincoln had so little taste for this species of litigation that he performed poorly in court, lost the argument, and thus allowed the fugitives to go free. Historians in recent years have been content to admit that Lincoln was a complex man, not always consistent, and to emphasize the rapid growth of his anti-slavery feelings in the later years of his life. All of this literature, however, has been consistent in focusing on the lawyer's personal moral dilemma. The legal issues involved

in the case have been substantially ignored.

The Matson slave case was a hearing for a writ of *habeas corpus* in behalf of Jane Bryant and her four children. They were the slaves of Robert Matson, a Kentucky planter who owned land in Coles County, Illinois. Matson brought slaves to Illinois to farm the land every year but always returned them after harvest, thus avoiding any claim that his slaves were permanent residents on Illinois's free soil and, therefore, entitled to freedom. Matson employed Jane's husband, Anthony, as a permanent overseer on the Illinois farm. This was strictly legal, for Anthony was a free man.

In 1847 Jane Bryant had a serious falling-out with Matson's white housekeeper, who may have been the master's mistress. Anthony began to fear that the housekeeper might persuade Matson to sell Jane and the children South. The housekeeper had threatened to do so, and she appeared to be in a position to make her threat stick. Anthony sought the help of Gideon M. Ashmore and Hiram Rutherford, local antislavery men. They kept Jane and the children at Ashmore's inn in Oakland, Illinois. Matson sought the remedy of law to gain the return of his property. He employed attorney Usher F. Linder, who managed to have the slaves confined to the jail in Charleston, the county seat of Coles County. Ashmore and Rutherford obtained a writ of *habeas corpus*, demanding Illinois's reasons for confining the fugitives, and a hearing was held before Judges Samuel H. Treat and William Wilson on October 16, 1847.

Lincoln came to Coles County and was also engaged on Matson's side. The opposing attorneys, Orlando B. Ficklin and Charles H. Constable, argued that the Northwest Ordinance of 1787 and the Illinois Constitution made the slaves free by virtue of their residence on the soil of a state where slavery was illegal. Lincoln apparently argued that Jane Bryant was a seasonal worker following a long-accepted custom and was in no way a legal resident of the state. The judges ruled in favor of the slaves and declared them free.

The aforementioned facts in the case are common knowledge. New light comes from Don E. Fehrenbacher's *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978). Professor Fehrenbacher explains that the legal difference between "domicile" and "sojourn" in a free state was a commonplace distinction in American jurisprudence in Lincoln's day. In Pennsylvania, for example, a master could remain in the state with his slaves for six months without affecting the legal status of the slaves. New York allowed a nine-month sojourn with slaves. In 1843 the Illinois Supreme Court had affirmed a master's right of sojourn in the state with his slaves, saying that to deny it would "tend greatly to weaken, if not to destroy the common bond of union amongst us." In the 1840s, however, New York and Pennsylvania revoked their laws allowing sojourn with slaves, and courts in other Northern states began to rule that slaves were freed merely by touching free soil. In the Matson case, some of Illinois's judges followed the new trend.

John J. Duff argued in *A. Lincoln: Prairie Lawyer* (New York: Rinehart, 1960) that Lincoln performed well in the case and that Ficklin and Constable performed poorly. All they had to do to assure her freedom, Duff claimed, was to cite as precedent the decision in *Bailey vs. Cromwell* — in which Lincoln himself had gained freedom for a Negro girl named Nance by arguing that the Illinois Constitution and the Northwest Ordinance prevented her being a slave in the state! Duff's argument betrays his lack of understanding of the issues in the Matson case. The issues in *Bailey vs. Cromwell* were altogether different. Nance was a resident of Illinois, an indentured servant rather than a slave. The Supreme Court ruled that Illinois law presumed a person free without any proof to the contrary, and Nance's "owner" could not produce that proof. The important point is that she lived in Illinois. *Bailey vs. Cromwell* had nothing to do with "domicile" and "sojourn."

The real marvel in the case is the reasoning of Treat and Wilson. Both men had been members of the Illinois Supreme Court in 1843, when it affirmed the right of sojourn with slaves in the state!

In the Matson slave case, Lincoln and Linder had the law on their side but not the judges.

THE SLAVE CATCHER TRIAL IN ELKHART COUNTY, INDIANA

BY

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